

CITY COUNCIL REPORT



Meeting Date: June 17, 2014
General Plan Element: *Economic Vitality*
General Plan Goal: *Sustain Scottsdale as a tourist destination*

ACTION

Amend the Museum Management Agreement for the Scottsdale's Museum of the West. Adopt Resolution 9744 authorizing Contract 2013-025-COS-A1, the first amendment to Scottsdale Museum of the West management agreement.

BACKGROUND

The purpose of this action is to amend the Scottsdale Museum of the West management agreement to transfer responsibility for payment of exterior electrical power from the City to the Museum operator.

In February 2013, Council approved Museum Management Agreement 2013-025-COS with Scottsdale Museum of the West, Inc. This agreement governs the responsibilities of the two parties for construction and operation of the museum, and included financial contributions from each party. The Agreement called for the Museum operator to pay utilities which serve the interior of the Museum. The City of Scottsdale was stipulated to pay for exterior utilities such as irrigation water for landscaping and electrical power for exterior lighting. Recently, it was determined that substantial cost would be incurred by separating the electrical power metering for exterior use. The Museum Director has agreed that the operator of the Museum will pay for exterior power usage. The City of Scottsdale will continue to provide irrigation water for exterior landscaping.

ANALYSIS & ASSESSMENT

Recent Staff Action

The Management Agreement serves as the contract between the City of Scottsdale and the Museum operator. The city will maintain ownership of the facility and the museum operator will provide management services for the museum.

RESOURCE IMPACTS

Available funding

This amendment to the Museum agreement saves money for the City of Scottsdale by transferring the cost of exterior electrical utilities to the Museum operator.

Staffing, Workload Impact

The contract administrator responsible for enforcement of all provisions of the contracts is Gary Meyer, Senior Project Manager, Capital Projects Management Division.

Maintenance Requirements

The Museum Management Agreement specifies maintenance responsibilities for the new facility. This action will transfer the responsibility for payment of electrical utilities on the exterior of the building from the city to the Museum .

OPTIONS & STAFF RECOMMENDATION

Recommended Approach: Adopt Resolution 9744 authorizing Contract 2013-025-COS-A1, the first amendment to Scottsdale Museum of the West management agreement.

Proposed Next Steps

If council approves the amendment, construction will continue at the site with the more cost-effective electrical utility metering system being installed.

RESPONSIBLE DEPARTMENT(S)


Community and Economic Development

Public Works, Capital Projects Management

STAFF CONTACTS

Gary Meyer, Senior Project Manager, gmeyer@scottsdaleaz.gov

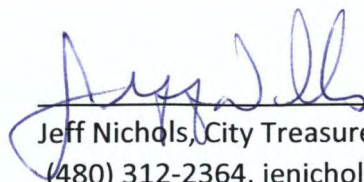
APPROVED BY



Daniel J. Worth, Executive Director, Public Works
(480) 312-5555, dworth@scottsdaleaz.gov

6-3-14

Date



Jeff Nichols, City Treasurer
(480) 312-2364, jenichols@scottsdaleaz.gov

6/3/14

Date

Paul T Katsenes

Paul T. Katsenes

6-2-14

Date

Executive Director, Community and Economic Development Executive Director

(480) 312-2890, pkatsenes@scottsdaleaz.gov

ATTACHMENTS

1. Resolution 9744
2. Location Map
3. Museum Management Agreement Amendment 2013-025-COS-A1

RESOLUTION NO. 9744

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE,
MARICOPA COUNTY, ARIZONA, AUTHORIZING A FIRST
AMENDMENT TO MUSEUM MANAGEMENT AGREEMENT NO. 2013-
025-COS**

(downtown western museum)

WHEREAS:

A. City of Scottsdale, an Arizona municipal corporation ("City"), and Museum of the West, Inc., an Arizona non-profit corporation ("Manager") executed that certain Museum Management Agreement (the "Original Agreement") dated February 26, 2013 whereby City contracted with Manager to manage a western museum upon certain real property located at the northwest corner of Marshall Way and Second Street.

B. The Original Agreement has not been amended.

C. City and Manager desire to alter their respective responsibilities for utilities for the Property.

D. The city council has considered the city expenditure, if any, authorized by the proposed amendment and the direct consideration that City will receive and finds that there is a clearly identified public purpose for City's expenditure, and that City will receive direct consideration substantially equal to its expenditure, if any.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Mayor is authorized and directed to execute on behalf of the City of Scottsdale the first amendment to the Original Agreement (No. 2013-025-COS-A1) in the form the City Council approved at the meeting in which this resolution is adopted.

PASSED AND ADOPTED by the Council of the City of Scottsdale this ____ day of _____, 20____.

CITY OF SCOTTSDALE, an Arizona
municipal Corporation

W. J. "Jim" Lane, Mayor

ATTEST:

By: _____
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

By:  _____
Bruce Washburn, City Attorney



(Resolution No. 9744)
(downtown western museum)

FIRST AMENDMENT TO MUSEUM MANAGEMENT AGREEMENT

THIS FIRST AMENDMENT TO MUSEUM MANAGEMENT AGREEMENT (the "Amendment") is made this ____ day of _____, 20____ by City of Scottsdale, an Arizona municipal corporation ("City"), and Museum of the West, Inc., an Arizona non-profit corporation ("Manager").

RECITALS

A. City and Manager executed that certain Museum Management Agreement (the "Original Agreement") dated February 26, 2013 whereby City contracted with Manager to manage a western museum upon certain real property located at the northwest corner of Marshall Way and Second Street.

B. The Original Agreement has not been amended.

C. City and Manager desire to alter their respective responsibilities for utilities for the Property.

D. Undefined terms capitalized in this Amendment have the meanings assigned in the Original Agreement. Unless otherwise specified, exhibit references refer to the exhibits attached to the Original Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and representations contained herein, Manager and City agree as follows:

1. Changes Related to Utilities. The following changes are made to the utility provisions of the Original Agreement:

1.1 A list of Manager Utilities was attached to the Original Agreement as Exhibit "H". At the end of the line of that exhibit that begins with the word "Electric", insert the words "(interior and exterior, including site lighting)".

1.2 A list of City Utilities was attached to the Original Agreement as Exhibit "I". Delete the last three items on this list so that the only item on the list is the word "Water".

2. Notice Addresses. City and Manager confirm the addresses for giving notices as stated in the Original Agreement.

3. Miscellaneous Provisions Regarding this Amendment. The parties also agree as follows:

3.1 Recording. This Amendment and the Original Agreement shall not be recorded.

3.2 No Further Amendment. Except as expressly amended by specific provisions of this Amendment, the Original Agreement and the parties' respective rights and obligations related to the Original Agreement are not affected by this Amendment.

3.3 Integration. This Amendment constitutes the entire agreement between the parties with respect to amending the Original Agreement and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence and memoranda or representation regarding amending the Original Agreement.

3.4 Manager's Prior Assignees. Manager warrants and represents that Manager has not assigned to anyone any rights under the Original Agreement and is the sole holder of all rights of Manager under the Original Agreement.

EXECUTED as of the date first given above.

MANAGER: SCOTTSDALE MUSEUM OF THE WEST INC.,
an Arizona non-profit corporation,

By: _____

Its: _____

CITY: CITY OF SCOTTSDALE, an Arizona municipal
corporation

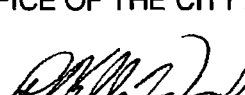
By: _____
W. J. "Jim" Lane, Mayor

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By:  *R Kelly Ward*

Bruce Washburn, City Attorney

Paul T. Katsenes, Executive Director,
Community & Economic Development

Derek Earle, City Engineer, Public Works
Capital Project Management

Jeff Nichols, City Treasurer